

of 7
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:)	CASE NO.: 98-02675-5-JRL
INTERNATIONAL HERITAGE, INC.,)	
)	CHAPTER 7
Debtor.)	

MOTION TO REQUIRE PAYMENT OF SETTLEMENT AMOUNT

NOW COMES Holmes P. Harden, trustee in the above captioned case, and moves that the court require Wachovia Corporation, Wachovia Corporation of North Carolina and their successor, Wells Fargo Bank (Wachovia), to pay a \$3,200.00 settlement, showing unto the court as follows:

1. The above captioned case was filed on November 25, 1998. Holmes P. Harden was appointed trustee.

2. Trustee on November 20, 2000 filed an 11 USC §548 complaint against Wachovia Corporation and Wachovia Corporation of North Carolina seeking the recovery of an avoidable transfer in the amount of \$4,936.64. Trustee's complaint was assigned AP No. 00-00260-5-AP. A copy of the complaint is attached as Exhibit A.

3. Trustee received court approval of a \$3,200.00 settlement of the claim on June 25, 2001 and the adversary proceeding was dismissed on June 27, 2001.

4. Trustee is in the process of preparing a final proposed distribution in this case and has been unable to establish receipt of the \$3,200.00 settlement amount. Trustee wrote to James E. Vaughn, counsel to Wachovia on May 21, 2010, to advise that the settlement amount had not been received. See attached Exhibit B. Wachovia has not paid the \$3,200.00 amount or provided Trustee with a cancelled settlement check.

5. Trustee alleges that he did not receive the settlement amount of \$3,200.00 as he has no record of a deposit in that amount. Trustee believes that a settlement check was either never mailed or was lost in the mail.

WHEREFORE, trustee moves that the court require Wachovia to issue a settlement check in the amount of \$3,200.00 to Holmes P. Harden, Trustee pursuant to its June 25, 2000 order approving settlement with interest at the legal rate from June 25, 2000.

DATED: July 20, 2010


BY: /s/Holmes P. Harden

Holmes P. Harden, Attorney for Trustee
PO Box 1000
Raleigh, North Carolina 27602
Telephone: 919.981.4000
Facsimile: 919.981.4300

FILED7:39 PM
NOV. 20 2000UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISIONPEGGY B. DEANS, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF N.C.

IN RE:)	
)	
INTERNATIONAL HERITAGE, INC.,)	CASE NO. 98-02675-5-ATS
)	
Debtor,)	CHAPTER 7
)	
HOLMES P. HARDEN, TRUSTEE,)	
)	
Plaintiff,)	
)	
vs.)	ADVERSARY PROCEEDING NO.
)	<u>5-00-00260-5-AP</u>
WACHOVIA CORPORATION, and)	
WACHOVIA CORPORATION OF)	
NORTH CAROLINA,)	
)	
Defendants.)	

COMPLAINT

NOW COMES Holmes P. Harden, Trustee, through undersigned counsel, and complains and alleges as follows:

1. Plaintiff, Holmes P. Harden, is the duly appointed Chapter 7 Trustee of the above-named Debtor.

2. Plaintiff is informed and believes and therefore alleges that Defendant Wachovia Corporation ("Wachovia") is a North Carolina corporation which maintains a place of business in Winston-Salem, North Carolina.

3. Plaintiff is informed and believes and therefore alleges that Defendant Wachovia Corporation of North Carolina ("Wachovia-NC") is a North Carolina corporation which maintains a place of business in Winston-Salem, North Carolina.

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 in that the matters herein are related to the Chapter 7 case of International Heritage, Inc., case number 95-02675-5-ATS, filed November 25, 1998, on the docket of this Court. This is a core proceeding under 28 U.S.C. § 157(b)(2)(H) to recover fraudulent conveyances.



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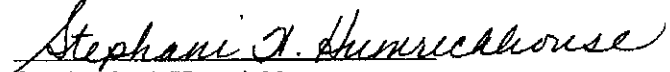
5. Within one year before November 25, 1998, the Debtor transferred the sum of \$4,936.64 to either Defendant Wachovia or Defendant Wachovia-NC for which the Debtor received less than reasonably equivalent value and the Debtor was insolvent on the date of the transfer or became insolvent as a result of such transfer.

6. These payments are avoidable and recoverable by the Plaintiff under Sections 548 and 550 of the Bankruptcy Code.

WHEREFORE, Plaintiff prays that:

1. The Court enter judgment against the Defendant Wachovia for the sum of \$4,936.64; and
2. In the alternative, the Court enter judgment against the Defendant Wachovia-NC for the Sum of \$4,936.64; and
3. The costs of this action be taxed to the Defendant.
4. The Court grant such other and further relief as the Court may deem just and proper.

This the 20 day of November, 2000.




Stephani W. Humrickhouse
State Bar #9528
Attorney for Plaintiff
NICHOLLS & CRAMPTON, P.A.
Post Office Box 18237
Raleigh, North Carolina 27619
Telephone: (919) 781-1311

STATE OF NORTH CAROLINA

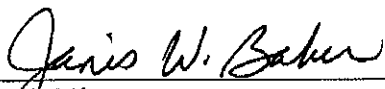
COUNTY OF WAKE

VERIFICATION

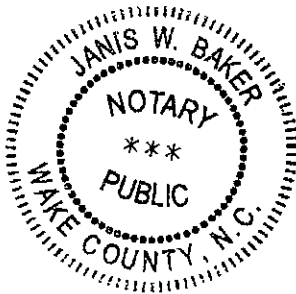
Holmes P. Harden, being first duly sworn, deposes and says that he is the Chapter 7 Trustee of International Heritage, Inc., Case No. 98-02675-5-ATS, the Plaintiff herein, that he has read the foregoing Complaint and is familiar with the contents thereof, that the matters and things therein are true and correct to the best of his knowledge.


Holmes P. Harden, Chapter 7 Trustee

Sworn to and subscribed before me
This the 20 day of November, 2000.


Notary Public

My commission expires: 1/3/04





WILLIAMS MULLEN

Direct Dial: 919.981.4011
hharden@williamsmullen.com
Board Certified Specialist in
Bankruptcy Law

May 21, 2010

James E. Vaughn
206 North Spruce St., Suite 2A
Winston Salem, NC 27101

RE: International Heritage, Case No.: 98-02675-5-ATS

Dear Mr. Vaughn:

I write regarding AP# S-00-00260-AP filed November 20, 2000 against Wachovia Bank in the above-referenced case. I am the Chapter 7 Trustee and sued to recover a preference in the amount of \$4,936.64. Stephanie Humrickhouse of Raleigh represented me and you represented Wachovia. The AP settled for \$3,200.00 pursuant to an order entered June 25, 2001. You subsequently filed a claim #15791 for Wachovia Bank in the amount of \$3,200.00.

We are finally at the point of closing the International Heritage Case and our reconciliation shows that we never received the \$3,200.00 settlement amount.

As we have no record of receipt of the settlement amount, the \$3,200.00 amount was either never paid or the check was somehow lost. I would very much appreciate you contacting Wachovia and requesting that another check be issued.

Thanking you in advance for your assistance in the above regard.

Sincerely,

Holmes P. Harden

Cc: Jenny Johnson

EXHIBIT

B

A Professional Corporation

NORTH CAROLINA • VIRGINIA • WASHINGTON, D.C. • LONDON
RBC Plaza 301 Fayetteville St. (27601) P.O. Box 1000 Raleigh, NC 27602-1000 Tel: 919.981.4000 Fax: 919.981.4300
www.williamsmullen.com

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:)	CASE NO.: 98-02675-5-JRL
INTERNATIONAL HERITAGE, INC.,)	
)	CHAPTER 7
Debtor.)	

TO: THE DEBTOR, ATTORNEY FOR THE DEBTOR, AND OTHER PARTIES IN
INTEREST

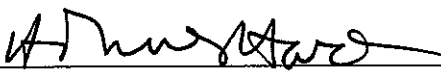
NOTICE IS HEREBY GIVEN of the Trustee's Motion to Require Payment of Preference Settlement Amount, filed simultaneously herewith by Holmes P. Harden, Attorney for Trustee. A copy of the motion is attached hereto.

FURTHER NOTICE IS HEREBY GIVEN that this motion may be allowed provided no response and request for a hearing is made by the debtor or other party in interest in writing to the Clerk of this Court, P.O. Box 1441, Raleigh, NC 27602 within thirty (30) days from the date of this notice; and

FURTHER NOTICE IS HEREBY GIVEN that if a response and a request for a hearing is filed by the debtor or other party in interest named herein in writing within the time indicated, a hearing will be conducted on the motion and response thereto at a date, time and place to be later set by this Court and all interested parties will be notified accordingly. If no request for a hearing is timely filed, the Court may rule on the motion and response thereto ex parte without further notice.

DATE OF NOTICE: July 20, 2010.

WILLIAMS MULLEN

BY: 
Holmes P. Harden, Attorney for Trustee
Post Office Box 1000
Raleigh, NC 27602
Telephone: 919/981-4000

CERTIFICATE OF SERVICE

I, Sharon M. Beadnell, do hereby certify that the foregoing ***Notice of Motion and Motion to Require Payment of Preference Settlement Amount*** was served upon all parties of record as indicated below either by electronic service via electronic mail or by mailing a copy thereof at the addresses indicated below with the proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Postal Service in Raleigh, North Carolina, on the 20th day of July, 2010.

WILLIAMS MULLEN

BY: /s/ Sharon M. Beadnell
Sharon M. Beadnell
P. O. Box 1000
Raleigh, NC 27602
Telephone: 919.862.4325

SERVED VIA CM/ECF:

Terri L. Gardner
International Heritage, Inc.
c/o Terri L. Gardner
terri.gardner@nelsonmullins.com

Marjorie K. Lynch
Bankruptcy Administrator
Marjorie_Lynch@nceba.uscourts.gov

SERVED VIA US POSTAL SERVICE:

James E. Vaughn
206 North Spruce St., Suite 2A
Winston Salem, NC 27101